

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KEITH DAVID HOUSTON,

Case No. 3:14-cv-00687-MMD-VPC

Plaintiff,

ORDER

v.

CITY OF CARSON, et al.,

Defendants.

Plaintiff, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), initiated this action in the First Judicial District Court of the State of Nevada in and for Carson City. (Dkt. no. 1-1.) After Defendant removed this action, the United States Magistrate Judge Valerie P. Cooke screened Plaintiff’s Amended Complaint (“Complaint”) and recommended dismissal. (Dkt. no. 14.) The Magistrate Judge further recommended denying Defendant’s motion to dismiss (dkt. no. 5) and Plaintiff’s motion for entry of default (dkt. no. 9) as moot. (Dkt. no. 15.) Plaintiff objects to the Magistrate Judge’s recommendation of dismissal. (Dkt. no. 16.) Defendant has filed a response to Plaintiff’s objection. (Dkt. no. 17.)

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct “any review at all . . . of any

1 issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
2 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
3 magistrate judge’s report and recommendation where no objections have been filed.
4 See *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the
5 standard of review employed by the district court when reviewing a report and
6 recommendation to which no objections were made); see also *Schmidt v. Johnstone*,
7 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s decision in
8 *Reyna-Tapia* as adopting the view that district courts are not required to review “any
9 issue that is not the subject of an objection.”).

10 In light of Plaintiff’s objection to the Magistrate Judge’s recommendation of
11 dismissal, the Court reviews the Magistrate Judge’s recommendation *de novo*. The
12 Magistrate Judge recommended dismissal of the Complaint without prejudice and
13 without leave to amend because Plaintiff must demonstrate that his criminal conviction
14 was overturned in order to bring claims under 42 U.S.C. § 1983. Having reviewed the
15 records in this case, the Court agrees with the Magistrate Judge.

16 Plaintiff alleges that he is an inmate in the custody of NDOC and housed at the
17 Lovelock Correctional Center as of the filing of the Complaint. (Dkt. no. 1-1 at 3-4.)
18 Plaintiff challenges his confinement absent a criminal conviction, contending that
19 confinement under such circumstance violates his constitutional rights under the
20 Fourteenth Amendment and gives rise to state law claims for misrepresentation and
21 negligence. (*Id.* at 3-8.) Plaintiff seeks damages and declaratory and injunctive relief,
22 including an order for his immediate release from custody. (*Id.* at 8-9.)

23 The Magistrate Judge screened Plaintiff’s Complaint pursuant to 28 U.S.C. §
24 1915A and found that Plaintiff’s claims are barred under *Heck v. Humphrey*, 512 U.S.
25 477 (1994). (Dkt. no. 14.) In his objection, Plaintiff argues that the Court should not have
26 screened his Complaint since it was filed in state court and *Heck* is inapplicable
27 because he is not challenging his conviction but is challenging confinement when he did
28 not receive a jury trial and was not convicted. (Dkt. no. 16.)

1 28 U.S.C. § 1915A(a) provides that “[t]he court shall review, before docketing, if
2 feasible or, in any event, as soon as practicable after docketing, a complaint in a civil
3 action in which a prisoner seeks redress from a governmental entity or officer or
4 ,employee of a governmental entity.” Thus, § 1915A(a) mandates the Court’s initial
5 screening of a complaint filed by a prisoner where the prisoner is seeking “redress from
6 a governmental entity” or its officer or employee. The fact that the Complaint was
7 initially filed in state court is of no import to the Court’s obligation to conduct an initial
8 screening.

9 The Complaint challenges Plaintiff’s conviction and seeks immediate release as
10 a form of relief. (Dkt. no. 1-1.) The fact that Plaintiff alleges he was not convicted but
11 that Defendant made misrepresentation about his conviction based upon a guilty plea
12 does not render *Heck* inapplicable. “The holding in *Heck* applies ... where ‘a judgment
13 in favor of the plaintiff would necessarily imply the invalidity of his conviction or
14 sentence.’” *Weilburg v. Shapiro*, 488 F.3d 1202, 1206 (9th Cir.2007) (citing *Heck*, 512
15 U.S. at 487).¹ *Heck* applies to bar Plaintiff’s claims.

16 The Magistrate Judge recommends dismissal without leave to amend. In his
17 objection, Plaintiff asserts that he is unable to pursue habeas relief because “he has
18 been incarcerated for over three decades, and was procedurally barred in 1995 in
19 federal court.” (Dkt. no. 16 at 7.) The Court thus infers that Plaintiff cannot establish that
20 his conviction has been invalidated to avoid *Heck*’s application. See *Guerrero*, 442 F.3d
21 at 703. The Court agrees with the Magistrate Judge’s recommendation to deny leave to
22 amend.

23 It is therefore ordered that United States Magistrate Judge Valerie P. Cooke’s
24 Report and Recommendation (dkt. no. 14) is accepted and adopted in full. The Clerk is
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¹The holding does not apply in cases where the plaintiff can demonstrate that the
27 conviction or sentence has been invalidated. *Guerrero v. Gates*, 442 F.3d 697, 703 (9th
28 Cir. 2003). Here, Plaintiff has not alleged that his conviction or sentence has been
invalidated.

1 directed to file the Amended Complaint (dkt. no. 1-1.) The Amended Complaint is
2 dismissed without prejudice and without leave to amend.

3 It is further ordered that the Magistrate Judge's Report and Recommendation
4 relating to two pending motions (dkt. no. 15) be accepted and adopted in full.
5 Defendant's motion to dismiss (dkt. no. 5) is denied as moot. Plaintiff's motion for entry
6 of default (dkt. no. 9) is denied as moot.

7 The Clerk is directed to enter judgment in favor of Defendant in accordance with
8 this Order and close this case.

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10 DATED THIS 27th day of August 2015.

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13 MIRANDA M. DU
14 UNITED STATES DISTRICT JUDGE
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